

## Message Text

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ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 L-03 AID-05 CEA-01 CIAE-00

COME-00 EA-06 FRB-03 INR-07 IO-10 NEA-10 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

DODE-00 DOTE-00 FMC-01 CG-00 OFA-01 DLOS-04 SS-15

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FM SECSTATE WASHDC

TO USMISSION OECD PARIS

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E.O. 11652:N/A

TAGS: EFIN, EWWT, OECD, UN

SUBJECT: CONTINUING OECD COUNCIL DISCUSSIONS RE UN  
LINER CODE

REF: A) OECD PARIS 19312 B) STATE 158119

C) OECD PARIS 16844

1. DEPARTMENT AGREES WE ARE BACK TO SQUARE ONE. WE NOW  
EVEN QUESTION ACCEPTABILITY OF PARTS OF ORIGINAL AND  
REVISED VERSIONS OF SEC GEN DRAFT COUNCIL TEXT. SINCE IT IS  
UNLIKELY UK TEXT (WE HAVE PROBLEMS ANY;AY WITH PARAS C  
AND E THEREOF FOR REASONS DISCUSSED BELO;. ALSO NOTE PARA C  
ONLY COVERS SIGNATORIES AND DOES NOT INCLUDE NONSIGNATORY,  
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OECD MEMBER COUNTRIES THAT MIGHT BECOME CONTRACTING

PARTIES TO UNC NOW THAT IT IS CLOSED FOR SIGNATURE.) WILL BE ACCEPTABLE; WE SUGGEST PUSHING FOR VERY SIMPLE, STRAIGHT-FORWARD, TWO PARAGRAPH TEXT BASED ON SECGEN REVISED DRAFT COUNCIL TEXT AS FOLLOWS: PARA A WOULD BE EXPANDED AND THE NEW PARA C (PARA 3, REFTEL A) CLARIFIED AS PROPOSED REFTEL A PARA 7, HOWEVER, WITHOUT MENTIONING ANY REFERENCE TO "ADHERENCE TO THE UNC", PARA B WOULD BE DELETED. WORDING OF PARA C MIGHT BE ALONG THE FOLLOWING LINES: REQ:-"S THE OECD COMMITTEE FOR INVISIBLE TRANSACTIONS TO REVIEW ALL DEVELOPMENTS WITH RESPECT TO THE UNC WHICH INVOLVE ANY QUESTIONS OF OECD MEMBER COUNTRIES' OBLIGATIONS UNDER THE CODE OF LIBERALIZATION FOR INVISIBLE TRANSACTIONS".

2. OUR POSITION SHOULD BE NOT TO ACCEPT UNDER ANY CIRCUMSTANCES ANY WORDING GIVING O" WHICH COULD BE INTERPRETED AS GIVING AN OECD GREEN LIGHT TO FRANCE, THE FRG AND BELGIUM AND ANY OTHERS FOR THAT MATTER TO TAKE FURTHER ACTION WITH RESPECT TO THE UNC. BY DELETING PARA B WE REMAIN CONSISTENT WITH THE VIEW EXPRESSED IN PARA 2 OF C(75)1 RE THE INHERENT CONFLICT BETWEEN THE TWO CODES AND ARE NOT PLACED IN A POSITION OF BEING PARTY TO AN OECD COUNCIL DECISION ASSENTING TO CERTAIN OECD MEMBERS BECOMING CONTRACTING PARTIES TO THE UNC, ALBEIT EVEN WITH RESERVATIONS. MOREOVER, WE DO NOT BELIEVE IT IS ESSENTIAL NOR ADVISABLE THAT THE ULTIMATE FORMULATION CONTAIN CLEAR ASSURANCES TO NON-SUPPORTERS OF THE UNC THAT ANY ACTION BY OECD MEMBERS IN IMPLEMENTING THE CODE WILL BE IN CONFORMITY WITH OECD LIBERALIZATION CODE OBLIGATIONS. NOR DO WE THINK THE OECD AS A GROUP SHOULD BLESS ANY ACTION BY ITS PRO-CODE MEMBERS ON THE UNC SINCE THE SPIRIT AND THRUST THEREOF IS INCONSISTENT WITH OECD'S PURPOSES AND GOALS. THE THREE OECD MEMBER COUNTRIES ON SIGNING THE CODE JUNE 30 INDICATED RESERVATIONS THAT THEIR SUBSEQUENT RATIFICATION AND IMPLEMENTATION OF THE UNC AT THE PROPER TIME WOULD BE IN CONFORMITY WITH THE TREATY OF ROME AND OECD CODE OF LIBERALIZATION OBLIGATIONS. HOWEVER, WE FIND THESE STATEMENTS, WHEREVER PLACED, INSUFFICIENT TO OVERCOME WHAT IS AN INHERENT INCONSISTENCY IN THE TWO INSTRUMENTS. STATEMENTS THAT THEY WILL IMPLEMENT THE UNC IN A LIMITED OFFICIAL USE

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MANNER COMPATIBLE WITH OECD CODE DO NOT RESOLVE THE LEGAL INCONSISTENCY BETWEEN THE TWO CODES.

3. RE INQUIRY PARA 8, REFTEL A, ON WORD "GOVERNMENTAL", IT WOULD APPEAR THIS ADJECTIVE INSERTED TO ENABLE THOSE OECD MEMBERS FAVORING UNC TO RESERVE ON CONTENTIOUS PROVISIONS WHEN ADHERING THERETO SO AS TO BE IN A POSITION THEREAFTER, IN THE EVENT OF THE UNC'S IMPLEMENTATION, TO ARGUE THAT

ANY RESTRICTIVE OR NONCOMPETITIVE MEASURES THEIR LINES AND  
OTHERS MAY ADOPT IN A PARTICULAR CONFERENCE SERVICE ARE NOT  
THE RESULT OF ANY GOVERNMENTAL ACTION, BUT SOLELY  
COMMERCIAL ARRANGEMENTS AND THEREFORE OECD CODE CONSIDERA-  
TIONS ARE NOT APPLICABLE. WHILE THIS WOULD PRESENT A  
PARADOXICAL SITUATION IN OUR VIEW, THIS TYPE OF APPROACH  
WOULD BE CONSISTENT WITH SOME OECD MEMBER COUNTRIES'  
POSITIONS RE THE NON-APPLICABILITY OF THE OECD CODE TO  
"PRIVATE COMMERCIAL ARRANGEMENTS". OUR POSITION IS THAT  
PARA B IN PARA 2 OF REFTEL A, WHICH, INTER ALIA, INCLUDES  
THE WORD "GOVERNMENTAL", IS UNACCEPTABLE FOR REASONS  
SETFORTH ABOVE. INGERSOLL

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** STANDARDS, MARINE TRANSPORTATION, CARGO, COMMITTEE MEETINGS, RESOLUTIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 04 AUG 1975  
**Decaption Date:** 01 JAN 1960  
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**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
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**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
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**Disposition Reason:**  
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**Document Source:** CORE  
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**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ORIGIN EB  
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**Original Handling Restrictions:** n/a  
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**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
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